



Appeal Decision

Site visit made on 17 February 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/C5690/C/19/3234677 907B Old Kent Road SE15 1NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by AGA Renovations Ltd against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice, numbered ENF/18/00248, was issued on 4 July 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the property to a 6 bed HMO.
 - The requirements of the notice are;
 - (1) Cease the residential use of the property.
 - (2) Remove all bathroom fixtures and fittings and all internal partition walls which facilitate the residential use of the property.
 - (3) Remove all materials, debris, waste and equipment resulting from the compliance with the requirement 2 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a)

Main Issue

2. The main issue in this appeal is the effect of the development on the living conditions of existing and future occupants, in respect of size and outlook.

Reasons

3. The appeal site is located to the rear of the commercial shop premises and first floor flat above. The subject building is single storey extending some distance to the rear of No 907. Access to the site is from White Post Street, which also provides access to premises to the rear. The area is characterised by buildings of various scales and designs, with a mix of commercial shops and restaurants at street level and residential flats above.
4. The building has been internally divided into six separate bedrooms, or bedsits, the larger two with double beds and the remainder with singles, allowing up to 8 persons to occupy the building. Each room had a small amount of storage, but no cooking facilities, although some of the rooms had small fridges.

5. At the time of my site visit each room was provided with a single roof light and this was the only natural source of daylight to the room. There was a separate communal kitchen with a cooker, a range of floor and wall storage and a fridge and freezer. There were no facilities for eating in the kitchen. There was a small communal dining and sitting area with two small sofas, a chair and small dining table. The single shared bathroom comprised two toilets, two showers and personal washing facilities. There was no external amenity space provided.
6. My attention has been drawn to the HMO license that was issued on 22 August 2018. The appellant's case is that the license considers matters such as room sizes, layout and quality of the accommodation. They submit that because of this license, this provides a statutory confirmation that the standard of accommodation is acceptable. However, these standards relate to licensing standards and do not form the basis of the Council's planning policy.
7. Policy DM32 of the Lewisham Development Management Local Plan (2014) (LP) refers to housing design, layout and space standards. It seeks to ensure that housing development provides an appropriate level of residential quality and amenity. It requires that new development should conform with the internal space standards set out in the London Plan. Policy 3.5 of the London Plan 2015 relates to the quality and design of housing developments and requires new development to reflect the minimum space standards set out in table 3.3 of that document. I note that there is no calculation for a single storey, 6 bedroom 8 person dwelling, but dwellings suitable for 8 people vary between a ground floor area of 117m² to 121m². Similarly, a 7 person, 6 bedroom dwelling would require 116m².
8. The Council in their statement, have provided a comparative table, that sets out the various room sizes in the building, compared to those set out in the above standard. These indicate that, based on the size of the rooms alone, the individual bedsits are adequate in size for the current layout. Whilst this is acknowledged by the Council, they are however, concerned that the lack of storage and outdoor amenity space results in a poor standard of residential accommodation for occupants.
9. The evidence indicates the building has an overall floor area of 101m², which falls considerably short of the above standards. I am conscious that the standards in the Local Plan and the London Plan do not relate specifically to an HMO, and therefore it is necessary to assess the development in the context of the facilities that have been provided.
10. The kitchen is modest in size with a standard four ring cooker. The range of storage units above and below the worktops would provide some equipment and food storage. However, I consider that this is inadequate for 8 people. Moreover, it would not be possible for more than two or three residents to prepare food at the same time, due to its modest size. Similarly, the communal sitting room and bathroom has very limited space to provide facilities for 8 people, especially at busy times of the day.
11. Turning to the rooms themselves. These are only provided with a single small roof light. Whilst this provides limited light into the rooms, there is no outlook. This gives the rooms an extremely gloomy, claustrophobic and overly enclosed feel.

12. Drawing all of the above points together, whilst the bedsits may be adequate in terms of their size, I conclude that the accommodation fails to provide sufficient space, of an appropriate quality for existing and future occupants. Moreover, the bedsits fail to provide an appropriate level of residential quality and amenity in relation to their outlook.
13. Overall, for the above reasons, I conclude that the development has a materially harmful effect on the living conditions of existing and future occupiers. The development therefore conflicts with policy 32 of the LP and policy 3.5 of the London Plan (2018).

The appeal on ground (f)

14. In appealing ground (f) the appellants need to demonstrate that the requirements of the notice exceed what is required to remedy the breach of planning control, or injury to amenity, depending on the purpose of the notice. The appellant argues that the provision of bathrooms, fittings and internal walls do not require planning permission. They submit therefore, that the first requirement of the notice, to cease the residential use is sufficient.
15. It is not clear from the evidence what the previous use of the building was. Nonetheless, the use of the property to provide a six bedroom HMO is a use for which planning permission is required and not been granted. From the wording of the notice, the Council are seeking to remedy the breach of planning control by restoring the land to its condition before the breach took place. It is therefore necessary to consider whether these requirements exceed what is necessary.
16. The works have been carried out to provide internal partitions that separate the building into 6 bedsits, and to provide the necessary equipment and cooking facilities for the residential use to operate. I have no evidence to suggest that any of the above works were carried out, other than to facilitate the change of use to an HMO. The nature and scale of the alterations indicate that they are part and parcel of that change of use; there is nothing to indicate the works were carried out in connection with a lawful use of the property. It is well established in case law that the notice can legitimately require the removal of works integral to, and solely for, the purpose of facilitating an unauthorised use. Accordingly, I find that the remedial nature of the notice requires full compliance by, ceasing the unauthorised use, and the removal of all facilitating works including the equipment introduced to enable the operation of the HMO.
17. Consequently, I conclude that the requirements are not excessive and the appeal on ground (f) fails.

The appeal on ground (g)

18. For this ground it is necessary to consider whether the compliance period of 6 months, is too short. It is the appellant's case that 6 months does not give them time to serve notice on tenants, allow them to find alternative accommodation, vacate the site, and for the works to be completed. The appellant advances that a period of 12 months would be more reasonable.
19. I am mindful that the building is currently occupied residentially, and therefore sufficient time is required to allow the occupants to find suitable additional accommodation. However, I have no specific information about the personal circumstances of any of the occupiers, or why a period of six months would be

inadequate for alternative accommodation to be secured. The remedial works are unlikely to require specialist building work and should not, in themselves, require additional time. Overall, given the serious concerns I have about the standard of accommodation being provided for residents, I do not consider that the breach of planning control should be allowed to continue for longer than is necessary.

20. Overall, I consider that a period of six months is a reasonable timescale to carry out the required steps. The appeal on ground (g) therefore fails.

Conclusion

21. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR